FOR ARGUMENT

(7)

NO. 90-967

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

GUY WOODDELL, JR.,
Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 71, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

REPLY BRIEF FOR PETITIONER

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Petitioner's opening brief advanced three basic arguments in support of his right to sue in federal court to enforce his union's constitution. First, it argued that in 1981 this Court had decided the fundamental question on which this case turns -- that a union constitution is a "contract between labor organizations" within the meaning of section 301 of the Labor-Management Relations Act ("LMRA"), 29 U.S.C. § 185 -- and that the Court's reasoning was fully applicable to suits brought by individual union members against their unions. Petitioner's Brief ("Pet. Br.") at 19-22, *citing Plumbers v. Plumbers Local 334*, 452 U.S. 615 (1981). Second, it argued that the effort of the court below to distinguish *Plumbers*

on the ground that section 301 applied because the suit there was "between labor organizations," but this suit is between a union and its member, was flatly inconsistent with *Smith v. Evening News Ass'n*, 371 U.S. 195 (1962), where the Court held that the "between" clause in section 301 modified the *contracts* that were subject to section 301, and not the *lawsuits* that were governed by it. Pet. Br. at 22-23. Third, the opening brief explained a variety of ways in which a holding that the enforcement of union constitutions was governed by federal law only when unions were the parties to the suit, but by state law when a member was a party as well, would be untenable, because it would produce forum-shopping, inconsistency of results, uncertainty about the meaning of union constitutions, and ultimately lessened stability in labor relations. Pet. Br. 23-28.

Respondents' brief makes no direct reply to either the second or the third argument. In response to the first argument, respondents contend that, although parts of a union constitution are a contract between unions, other parts are a contract between the union and its members, and only the former are governed by section 301. Respondents' Brief ("Resp. Br.") at 10-12, 15-17. This reply brief first explains the flaws in this analysis, and then demonstrates that respondents' remaining arguments either repeat the legislative history arguments that were advanced and rejected in *Plumbers*, or otherwise lack a sound basis.[1]

1. Respondents' principal argument is that a union constitution contains several different kinds of contracts. One of them is conceded to be a contract between unions, as the Court held in *Plumbers*, but they also include a contract among individual members and a contract between members and the union. Under respondents' analysis, only that part of the constitution that is between unions may be the basis for a cause of action under section 301.

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[1] Respondents concede that petitioner has a right to a jury trial on his claims under the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA"). Accordingly, petitioner will not address that issue in this reply or at oral argument, except to respond to questions from the Court.

This argument, however, has two principal flaws. The first is that it posits a wholly artificial and unworkable distinction among parts of a union constitution that would henceforth determine both federal jurisdiction and the source of the law governing the case. Henceforth, the first task in every case under a union constitution would be to decide to which contract category the particular clause belonged. Of course, union constitutions are not neatly labeled according to respondents' novel categories, and respondents have not advanced any method of deciding how to characterize a given clause. Presumably, respondents assume that the Court will treat those portions of the constitution that are at issue in this case, and that protect individuals against wrongdoing by officials, as being part of the "individual" contract. However, this assumption overlooks the fact that the constituent unions that formed the contract in the first place may have insisted upon such protections as a condition of their forming the International, just as some of the thirteen sovereign colonies insisted upon the addition of a Bill of Rights as a condition of the ratification of the United States Constitution.

Moreover, under respondents' theory, a suit could involve some clauses that were federal and some that were state. Each clause would then have to be construed under a separate legal doctrine, and the remedies for violations of the different clauses would be governed by the different doctrines as well. In short, respondents have proposed an unmanageable rule, and hence it is not surprising that they have been unable to cite a single case that adopts their distinctions, or that denies a right of action on the ground that the wrong kind of contract is involved. To the contrary, all that respondents have cited, in their effort to show the general understanding about the nature of union constitutions at the time section 301 was enacted, Br. 16-17, are some cases that treat constitutions as one kind of contract, and some that treat them as another kind, in each case concluding that a cause of action could be brought on the contract. However, this debate about the nature of the union constitution, at least for purposes of section 301 coverage, was resolved by this Court in *Plumbers*.

The second flaw in respondents' segmentation argument is in its assumption that, even if constitutions could be divided in the

suggested manner, an individual member may not sue to enforce those portions of the constitution that are section 301 contracts. This assumption pervades respondents' brief, but nowhere is the proposition argued and established. The closest that respondents come to making an argument on this subject is to say that there is no legislative history to show that Congress intended to grant individual members a right to sue. Br. at 17, 18. But this Court has already decided that the same statute authorizes individual beneficiaries to sue once a particular contract has been determined to be within the ambit of section 301. *Smith v. Evening News Ass'n*, 371 U.S. 195 (1962). The basis for the holding in *Smith* was not the statute's legislative history, for there is little more legislative history on the meaning of section 301 as it applies to collective bargaining agreements ("CBAs") than there is pertaining to union constitutions. Rather, the basis for the holding in *Smith* was the plain language of the statute, making it clear that all suits based on section 301 contracts were within the statute, and that the word "between" in section 301 modified the parties to the contract, not the parties to the suit. Because the language was clear there was no need to resort to legislative history.[2]

2. Respondents repeatedly recite the enactment of the LMRDA in 1959 to bolster their argument that union constitutions may not be enforced under federal law when an individual member is the plaintiff. Respondents concede that this Court has been increasingly reluctant to rely on the actions of a subsequent Congress to find the legislative intent of a previous Congress, but they fail to take this admonition to heart. Nor do respondents acknowledge that the LMRDA argument was made and rejected in *Plumbers*. *See* Brief for Respondents in *Plumbers*, at 18-20; 451 U.S. at 626 n.14.

Indeed, respondents do not even rely on what Congress

[2] Respondents also seek to distinguish *Smith* by contrasting that case, where the Court was concerned that individual employees' claims under a CBA might affect labor-management relations, with the issues that arise under union constitutions that supposedly lack such impact when an individual member is a plaintiff. Although petitioner's opening brief, at 23-24, 25-26, cited numerous situations in which that impact would be felt, respondents simply ignore those arguments.

actually enacted in 1959, but rather on what respondents describe as the assumptions of some members of Congress about the nature of existing law. There is no question that Congress considered existing law to be inadequate to protect the rights of individual members and the democratic process as a whole, and that it was for this reason that Congress chose to enact a comprehensive regulation of intra-union affairs. But that assumption is not inconsistent with the proposition that union constitutions may be enforced by their members; Congress simply concluded that the protections of union constitutions alone were inadequate, and that minimum statutory standards were required to protect union members, in addition to allowing members to enforce their union constitutions.

Nor did the language of the LMRDA embody the assumption that constitutions were to be enforced under state law. Respondents erroneously cite sections 103, 403, and 603(a) of the LMRDA, 29 U.S.C. §§ 413, 483, and 523(a), for that proposition. Br. at 13-14, 26. However, section 103 does not, as respondents suggest, simply preserve state remedies under union constitutions; by its terms, it provides that Title I of the LMRDA does not preempt "rights and remedies . . . under any State or Federal law, or under the [union's] constitution and bylaws . . .." Section 603(a) likewise preserves both state and federal law rights and remedies. And section 403 preserves all "existing rights and remedies to enforce the constitution," not just those under state as opposed to federal law. Thus, whatever assumptions certain members of Congress may have made about the availability of state law, those assumptions were not enshrined in the LMRDA, and the passage of that statute does not undercut petitioner's claim here.[3]

3. Respondents' brief, at 19, invokes a passage in *Motor Coach Employees v. Lockridge*, 403 U.S. 274, 300-301 (1971), that courts are not competent to resolve disputes about the meaning

[3] We note, however, the inconsistency between these anti-preemption provisions, in which Congress expressed its intent to allow members to continue to sue to enforce their rights under union constitutions, and respondents' argument made elsewhere in their brief, at 23-25, that such state law claims are preempted by section 301.

of "union employee contracts that are said to be implied in law," a phrase which respondents properly treat as referring, in context, to suits over union constitutions. In *Lockridge*, however, the employee had sued under state law, and the only question was whether federal law preempts such state law claims under the principles of *San Diego Bldg. Trade Council v. Garmon*, 359 U.S. 236 (1959). The opinion repeatedly referred to the question presented as being whether local law and state court jurisdiction were defeated by the principles of NLRA preemption. *E.g.*, 403 U.S. at 285, 288-289, 290. The Court was not presented with the question of whether a federal claim, based on the union constitution, could be pursued under section 301. Any dictum in *Lockridge* implying that no law authorizes a suit on the union constitution is inconsistent not only with this Court's later rulings in such cases as *Plumbers*, but also with more recent cases involving the duty of fair representation that have authorized individual members to sue to enforce contractual promises made to them by unions. *See Steelworkers v. Rawson*, 110 S. Ct. 1904, 1912 (1990).

4. Finally, respondents argue that allowing union members to sue to enforce their constitution under section 301 would embroil the courts in picayune disputes about such issues as whether a meeting should have continued past 11 p.m. It seems exceedingly unlikely that the minor disputes imagined by respondents would lead to the retention of counsel and the filing of litigation, but the question in this case, as limited by the Court's revision of the second Question Presented, is not, as respondents' arguments suggest, whether claims under the union constitution may be litigated at all, although respondents do suggest that some constitutional claims are preempted. Br. at 25.[4] Instead, the

[4] Respondents err in contending, Br. at 7 n.2, 23 n.6, that petitioner did not seek to present that question for this Court's review. However, the Court, in granting certiorari in this case, rewrote the second Question Presented with the evident objective of excluding the preemption question from this case. Similarly excluded from the Question Presented is whether an individual officer or member may be sued under section 301. The Court thus has no occasion to decide whether section 301(b) protects individual members against damages awards based on constitution violations, as it protects them against damages for violation of a CBA. *Complete Auto Transit v. Reis*, 451 U.S. 401 (1981).

question is whether the cases are governed by section 301, and thus whether there is federal jurisdiction, and whether the principles of federal law govern the outcome. The alternative to a federal cause of action is not no litigation but state court litigation, with state courts interpreting national unions' constitutions under state law.

Underlying respondents' arguments is an unspoken attempt to reinstate the proposition that only suits that pass a "significant impact on labor relations" test may be maintained under section 301. That notion was decisively rejected in *Plumbers* as having no basis in the language of the statute, and it should not be resurrected here.

It may well be that union constitutions have minor provisions that may, in the abstract, seem unworthy of litigation. Indeed, many such provisions may actually not be worth litigating. Most if not all of respondents' hypotheticals would never reach the point of litigation due to the risk and cost involved, especially given the fact that individual union members are likely to be the parties most lacking in resources. Moreover, many provisions of CBAs may similarly be so trivial as not to be worth litigating, but that has never been a reason to forbid individual employees from suing to enforce their rights under section 301.

To the extent that cases under constitutions arise, the fact remains that they may also have an important bearing on labor relations matters, as petitioner's opening brief observed. If the price to be paid for federal court oversight concerning the application of union constitutions to such controversies is that the courts may also have to address less consequential matters, however infrequently, then we submit that the price of federal uniformity is worth paying.[5]

[5] This Court has avoided the floodgates problem in the CBA context by erecting barriers to litigation. *E.g.*, *Paperworkers v. Misco*, 484 U.S. 29 (1987). Comparable limits may ultimately be developed in enforcing union constitutions, but such issues are not presented at this stage of the proceedings.

CONCLUSION

The judgment of the court of appeals denying the right to jury trial and affirming the dismissal of the claim on the union constitution should be reversed, and the case remanded for further proceedings.

Respectfully submitted,

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